

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Adelphia Cable Communications)	CSR 6506-E
)	
MCC Georgia LLC)	CSR 6785-E
)	
Mediacom Arizona LLC)	CSR 6815-E & 6820-E
)	
Mediacom Southeast LLC)	CSR 6767-E, 6849-E, 6870-E & 6875-E
)	
Petition for Determination of Effective)	
Competition in various Alabama, Arizona,)	
Florida, Georgia, and Tennessee Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2007

Released: June 26, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers several petitions that Adelphia Cable Communications (“Adelphia”),¹ MCC Georgia LLC (“MCC”), Mediacom Arizona LLC (“Mediacom Arizona”), and Mediacom Southeast LLC (“Mediacom Southeast”) (collectively the “Petitioners” or “operators”) filed with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that Petitioners are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)² and the Commission’s implementing rules,³ and are therefore exempt from cable rate regulation in the communities listed in

¹Comcast Corporation and Time Warner recently acquired the assets of Adelphia Communications Corporation. *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses: Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors and Transferors to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner, Inc.; Transferee; Time Warner, Inc., Transferor, to Comcast Corporation, Transferee*, 21 FCC Rcd 8203 (2006). As part of that proceeding, the parties requested that the Commission’s grant of its consent to the transactions include and accommodate, as appropriate, applications that will have been filed by such licensees relating to such cable systems that are pending at the time of the consummation of the transactions. In this matter, we also will take that to include pending petitions for effective competition. Therefore, the action we take in this proceeding will transfer to the successor-in-interest, either Comcast or Time Warner, as it relates to these franchise areas.

² See 47 U.S.C. § 543(a)(1).

³ 47 C.F.R. § 76.905(b)(4).

Attachment A (the “Communities”). No opposition to any petition was filed.⁴ Finding that the Petitioners are subject to effective competition in the listed Communities, we grant the petitions.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁵ as that term is defined by Section 623(l) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.⁶ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁷

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁸ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. (“DirecTV”) and DISH Network (“DISH”) is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁹ The two DBS providers’ subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during that period.¹⁰ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A relating to the competing provider test are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the “competing provider” test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than

⁴On February 23, 2007, the Commission sent letters to various cable operators, including the above-captioned Mediacom petitions (MCC Georgia CSR 6785-E; Mediacom Arizona CSR 6815-E and 6820-E; and Mediacom Southeast CSRs 6767-E, 6849-E, 6870-E and 6875-E), informing them of a deficiency in their petitions for effective competition. The letter noted that the Satellite Broadcasting and Communications Association (“SBCA”) report submitted listed the number of DBS subscribers in the franchise area but failed to list the corresponding zip codes. The letter explained that the exclusion of the zip codes prevents affected local franchising authorities from ascertaining whether SBCA data accurately reflects the franchise area, and raises questions regarding the accuracy of the number of DBS subscribers in the franchise area. Cable operators were given 30 days to supplement their petition by supplying the missing zip code information. Local franchising authorities were permitted to supplement any existing opposition or file an opposition based on supplemental data within 50 days from the date of the Commission’s letter. The above-captioned cable operator, Mediacom, filed the requested information for the above-captioned petitions. No opposition to Mediacom’s filing has been received by the Commission.

⁵47 C.F.R. § 76.906.

⁶ See U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁷ See 47 C.F.R. §§ 76.906 & 907.

⁸47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

⁹ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

¹⁰ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73, 21 FCC Rcd 2503 (rel. March 3, 2006).

one non-broadcast channel.¹¹ We further find that the operators have demonstrated that the Communities set forth in Attachment A are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the “competing provider” test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioners sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the SBCA that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.¹² The Petitioners state that they are the largest MVPD in some instances,¹³ however, they argue that even in those communities where they are not the largest MVPD or are otherwise unable to determine the largest MVPD because the number of DBS subscribers for DirecTV and Dish are aggregated and exceed the number of the Petitioners’ subscribers, they still satisfy the second prong of the competing provider test.¹⁴ In the instances where the Petitioners’ are not able to determine the largest MVPD, we are still able to conclude that the second prong is met by analyzing the data submitted for both the Petitioners’ and DBS providers.¹⁵

5. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Petitioners have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in these Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Petitioners have submitted sufficient evidence demonstrating that its cable systems serving the communities set forth in Attachment A are subject to effective competition under the competing provider analysis.

B. Low Penetration Effective Competition

6. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.”¹⁶ Mediacom Arizona and Mediacom Southeast provided information showing that less than 30 percent of the households within the franchise areas set forth in Attachment B subscribe to their cable services.¹⁷ Accordingly, we conclude that Mediacom Arizona and Mediacom Southeast have demonstrated the existence of “low penetration” effective competition in the franchise areas set forth in Attachment B pursuant to our rules.

¹¹See 47 C.F.R. § 76.905(g).

¹²The Petitioners provided SBCA zip code plus four reports in support of their petitions, except for Adelpia Petition CSR 6506-E, which provided a five digit zip code report from Media Business Corp.

¹³Adelpia Petition at 6 (CSR 6506-E); Mediacom Arizona Petition at 6 (CSR 6815-E); Mediacom Southeast Petition at 6 (CSR 6767-E) (Greensboro); ¹³ Mediacom Southeast Petition at 6–7 (CSR 6849-E) (Ardmore, TN); Mediacom Southeast Petition at 6 (CSR 6870-E) (Bonifay, Vernon, Walton).

¹⁴MCC Petition at 6 (CSR 6785-E); Mediacom Arizona Petition at 6 (CSR 6820-E); Mediacom Southeast Petition at 6 (CSR 6767-E) (Hale); ¹⁴ Mediacom Southeast Petition at 6-7 (CSR 6849-E) (Ardmore, AL, Elton, TN, Lincoln, TN); Mediacom Southeast Petition at 6 (CSR 6870-E) (Holmes).

¹⁵If the subscriber penetration for both the cable operator and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied. See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23559 (MB 2002).

¹⁶47 U.S.C. § 543(l)(1)(A).

¹⁷Mediacom Arizona Petitions CSR 6815-E and 6820-E and Mediacom Southeast Petition CSR 6875-E.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by Adelphia Cable Communications, MCC Georgia LLC, Mediacom Arizona LLC, and Mediacom Southeast LLC listed on Attachments A and B for a determination of effective competition in the Communities listed thereon **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to the local franchising authorities overseeing Adelphia Cable Communications, MCC Georgia LLC, Mediacom Arizona LLC, and Mediacom Southeast LLC **ARE REVOKED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

Attachment A

COMMUNITIES SERVED BY ADELPHIA CABLE COMMUNICATIONS

CSR 6506-E

Communities	CUIDS	CPR*	2000 Census Households⁺	Estimated DBS Subscribers⁺
Friendsville	TN0325	20.72%	362	75

COMMUNITIES SERVED BY MCC GEORIGIA LLC

CSR 6785-E

Communities	CUIDS	CPR*	2000 Census Households⁺	Estimated DBS Subscribers⁺
Cataula	GA0770	29.23%	7804	2281
Ellerslie	GA0772			
Forston	GA0773			
Mulberry Grove	GA0771			
Shenandoah	GA0774			
Harris County	GA0823			

COMMUNITIES SERVED BY MEDIACOM ARIZONA LLC

CSR 6815-E

Communities	CUIDS	CPR*	2000 Census Households⁺	Estimated DBS Subscribers⁺
City of Nogales	AZ0010	20.15%	5985	1206

CSR 6820-E

Communities	CUIDS	CPR*	2000 Census Households⁺	Estimated DBS Subscribers⁺
City of Apache Junction	AZ0210	43.38%	13775	5976

COMMUNITIES SERVED BY MEDIACOM SOUTHEAST LLC

CSR 6767-E

Communities	CUIDS	CPR*	2000 Census Households⁺	Estimated DBS Subscribers⁺
Greensboro	AL0121	30.21%	1026	310
Hale	AL0335	31.69%	6415	2033

CSR 6849-E

Communities	CUIDS	CPR*	2000 Census Households⁺	Estimated DBS Subscribers⁺
Lincoln County Ardmore	TN0313 TN0264	32.50%	12503	4064
Ardmore County Elkton	TN0265 TN0268	31.37%	11713	3674
Ardmore	TN0276	20.50%	24688	5062
Town of Ardmore	AL0275	24.13%	460	111
City of Ardmore	TN0266	22.95%	427	98

CSR 6870-E

Communities	CUIDS	CPR*	2000 Census Households⁺	Estimated DBS Subscribers⁺
Bonifay	FL0524	17.81%	1095	195
Holmes	FL1138	17.89%	6921	1238
Vernon	FL0811	21.96%	296	65
Walton	FL0647	27.12%	16548	4487

*CPR = Percent of DBS penetration rate.

+ = See Cable Operator Petitions

Attachment B

COMMUNITIES SERVED BY MEDIACOM ARIZONA LLC

CSR 6815-E

Communities	CUIDS	CPR*	2000 Census Households⁺	Cable Subscribers⁺
Rio Rico	AZ0037	11.88%	11809	1403
Santa Cruz	AZ0052			

CSR 6820-E

Communities	CUIDS	CPR*	2000 Census Households⁺	Cable Subscribers⁺
Pinal	AZ0276	6.21%	61364	3809
Gold Canyon	AZ0325			
Queen Valley	AZ0326			

COMMUNITIES SERVED BY MEDIACOM SOUTHEAST LLC

CSR 6875-E

Communities	CUIDS	CPR*	2000 Census Households⁺	Cable Subscribers⁺
Madison	AL0345	12.56%	109955	13807
Harvest	AL0373			
Limestone	AL0414	0.54%	24688	134